

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1233 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----

AMRUTBHAI B PATEL

Versus

H H DIGVEERENDRASINHJI

-----

Appearance:

MR JV DESAI for Petitioner

MR SN SHELAT for Respondent No. 1

-----

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/03/2000

ORAL JUDGEMENT

#. The opponent plaintiff had filed Regular Civil Suit No.15 of 1981 in the court of the learned Civil Judge (JD) at Vansada for obtaining possession of the suit

premises on the ground that the defendant was occupying the suit premises as a tenant by paying Rs.10/- as rent per month. He is in arrears since 97 months. Therefore, notice of demand was given to the defendant-tenant on 6.1.1981. Since the defendant-tenant failed to comply with the same, the aforesaid suit was filed.

#. The defendant filed written statement at exh.20 and resisted the suit by contending that the amount of arrears of rent stated by the plaintiff is barred by limitation. That he has not committed any breach of tenancy. That the secretary of the plaintiff used to come to the defendant for collecting the rent and he used to receive one years' rent at a time. That he was not issuing any receipt for the rent received. On these grounds the defendant has prayed for the dismissal of the suit.

#. From the pleadings of the parties the Trial Court has framed various issues at exh.22.

#. After hearing the arguments of both the sides and after appreciating the evidence both oral and documentary the Trial Court came to the conclusion that the petitioner-defendant is in arrears of rent for more than six months and since no dispute of standard rent has been raised within one month of the receipt of the suit notice that the case would fall under section 12(3)(a) of the Bombay Rent Act. Accordingly the Trial Court by its judgment and order dated 30.9.1983 decreed the suit.

#. Said judgment and order of the Trial Court was challenged by the present petitioner-defendant by way of filing Regular Civil Appeal No. 8 of 1984 in the court of the learned District Judge, Valsad at Navsari.

#. The Appellate Court came to the conclusion that the case would fall under section 12(3)(a) of the Bombay Rent Act as no dispute of standard rent was raised within one month of the receipt of the suit notice. The Appellate Court also came to the conclusion that the defendant had not given any reply to the suit notice and in that view of the matter the decree of the Trial Court was confirmed.

#. I have heard the arguments of the learned advocates of both the sides. It is not in dispute that no reply was given to the suit notice by the defendant tenant. It is not in dispute that within one month of the receipt of

the notice the tenant had not paid the arrears of rent to the landlord. That no dispute of standard rent has been raised by the tenant within one month of the receipt of the suit notice. The learned Appellate Judge has found in para 6 of his judgment that the tenant has not paid the rent for more than 12 months. On behalf of the landlord Account Books were also produced and as per the books of accounts, the tenant has not paid the rent for the aforesaid period. In that view of the matter therefore the case would squarely fall under section 12(3)(a) of the Bombay Rent Act. In the circumstances, I do not find any illegality or infirmity in the judgments and orders passed by the courts below which is required to be corrected by this court while exercising revisional power. In the circumstances the Revision Application requires to be dismissed and the same is accordingly dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

#. At this stage Mr. Desai learned advocate for the petitioner-tenant has requested that he may be given some time for vacating the suit premises as the petitioner-tenant will have to find out alternative suitable accommodation. In the facts and circumstances I grant time upto 31.3.2002 for the purpose of vacating the suit premises on his filing usual undertaking before this court within 8 weeks from today. In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit premises to any one and without obstructing in any manner he will hand over the vacant and peaceful possession to the landlord on or before 31.3.2002. If the petitioner fails to file the undertaking within 8 weeks from today or if the petitioner commits any breach of the said undertaking it will be open for the landlord to execute the decree for possession forthwith.

(P.B.Majmudar.J)

govindan

